

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

KEITH JEROME WRIGHT,

Plaintiff,

v.

IDALBERTO ZALDIVAR-GALVES,

Defendants.

No. 1:24-cv-01029 GSA (PC)

ORDER VACATING ORDER TO SHOW
CAUSE

(ECF No. 7)

ORDER GRANTING PLAINTIFF'S FIRST-
FILED APPLICATION TO PROCEED IN
FORMA PAUPERIS

(ECF Nos. 2, 8)

ORDER DISREGARDING AS
DUPLICATIVE PLAINTIFF'S SECOND-
FILED APPLICATION TO PROCEED IN
FORMA PAUPERIS AS MOOT

(ECF No. 9)

Plaintiff, a state prisoner proceeding pro se, has filed this civil rights action seeking relief under 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302. He has filed two motions to proceed in forma pauperis. See ECF Nos. 2, 9.

On September 3, 2024, the Court issued an order directing Plaintiff to show cause why he should not be required to pay the filing fee in full as a three strikes litigant within the meaning of 28 U.S.C. § 1915(g). ECF No. 7. For the reasons stated below, the order will be vacated. In

1 addition, Plaintiff's application to proceed in forma pauperis, docketed August 29, 2024 (ECF
2 No. 2, 8), will be granted, and his in forma pauperis application docketed September 20, 2024
3 (ECF No. 9), will be disregarded as duplicative.

4 I. RELEVANT PROCEDURAL HISTORY

5 On August 29, 2024, Plaintiff's complaint and his application to proceed in forma
6 pauperis were docketed. ECF Nos. 1, 2. Shortly thereafter, on September 3, 2024, the Court
7 ordered Plaintiff to show cause why, consistent with the three strikes rule of 28 U.S.C. § 1915(g),
8 he should not be required to pay the filing fee in full prior to proceeding with this matter. ECF
9 No. 7. He was given twenty-one days to respond to the Court's order. Id. at 4. On the same day,
10 Plaintiff's prisoner trust fund account statement, which must accompany an application to
11 proceed in forma pauperis (see 28 U.S.C. § 1915(a)(2)), was docketed. ECF No. 8.

12 On September 20, 2024, Plaintiff filed a second application to proceed in forma pauperis.
13 ECF No. 9. To date, however, Plaintiff has not filed a response to the order to show cause.

14 II. DISCUSSION

15 A three strikes litigant must pay the filing fee for a complaint in full prior to proceeding
16 any further in an action *unless* he is in imminent danger of serious physical harm at the time he
17 files the complaint, and the imminent harm is related to the violations of right alleged that are
18 alleged in the complaint. see 28 U.S.C. § 1915(g) (imminent danger requirement); Ray v. Lara,
19 31 F.4th 692, 700 (9th Cir. 2022) (nexus with alleged violations of right requirement). Upon
20 further review of Plaintiff's complaint, the Court has determined that in the complaint he has
21 made an adequate showing – albeit indirectly – that he was in imminent danger of serious
22 physical harm at the time he filed it, and that the found imminent danger is directly related to the
23 claims in his complaint. Specifically, Plaintiff has alleged violations of his Eighth Amendment
24 rights stemming from Defendant's failure to treat his shoulder which left him in pain and with an
25 exposed clavicle bone. See ECF No. 1 at 7-11; see also Andrews v. Cervantes, 493 F.3d 1047,
26 1053 (9th Cir. 2007) (stating imminent danger must exist at time complaint was filed); Ray, 31
27 F.4th at 700.

1 Given these findings, the Court will vacate its order to show cause and will grant
2 Plaintiff's first-filed application to proceed in forma pauperis. In addition, it will disregard
3 Plaintiff's second-filed in forma pauperis application as duplicative.

4 Accordingly, IT IS HEREBY ORDERED that:

5 1. The order directing Plaintiff to show cause why his application to proceed in forma
6 pauperis should not be denied in light of 28 U.S.C. § 1915(g) (ECF No. 7) is VACATED;

7 2. Plaintiff's first-filed application to proceed in forma pauperis (ECF No. 2) is
8 GRANTED, and

9 3. Plaintiff's second-filed motion to proceed in forma pauperis (ECF No. 9) is
10 DISREGARDED as duplicative.

11 The Court will screen the complaint in due course.

12
13
14 IT IS SO ORDERED.

15 Dated: September 29, 2024

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE